UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/CONF.164/L.38
2 March 1994
ENGLISH
ORIGINAL: RUSSIAN

UNITED NATIONS CONFERENCE ON STRADDLING
FISH STOCKS AND HIGHLY MIGRATORY
FISH STOCKS
New York, 14-31 March 1994

CONCEPTUAL APPROACH TO THE CONSERVATION OF STRADDLING FISH STOCKS BY IMPROVING THEIR MANAGEMENT

(Submitted by the delegation of the Russian Federation)

1. In a number of theoretical studies and in fisheries practice, extensive use is made of the concepts of "management of living marine resources" and "management of fisheries". In addition, the term "conservation of living marine resources" enjoys wide acceptance among fisheries practitioners. The latter term is also used, along with "management of living marine resources", in the text of the 1982 United Nations Convention on the Law of the Sea. At the same time, no precise definition of all three terms which would be shared by the majority of countries is given in the United Nations Convention on the Law of the Sea. In the view of the Russian delegation, however, the reaching of agreement on these issues among participants in the Conference could facilitate the attainment of the Conference's basic objective, namely, improving cooperation among States in the conservation and rational utilization of straddling fish stocks and highly migratory fish stocks and in drawing up of relevant recommendations.

1.1. The documents submitted by the Russian delegation at the first session of the Conference contain proposals regarding the definition of concepts - "management of stocks", "management of fisheries" and "conservation of living marine resources" - (A/CONF.164/L.32, annex), and also give for the first time a definition and list of the main species of straddling fish stocks (A/CONF.164/L.18) and the main provisions of the future regime relating to straddling fish stocks (A/CONF.164/L.25, 26 and 27), which could serve as a basis for the recommendations to be drawn up by the Conference.

1.2. At the same time these definitions, as well as the future agreed regime, must take into account contemporary scientific data on the biological and ecological characteristics of such stocks in the various regions of the oceans and seas. From an analysis of these data, five main types may be identified. They are:

(a) Stocks which basically are constituted in and inhabit the 200-mile economic zone (of one, two, three or more States) and only at certain periods of their life-cycle migrate (actively or passively) beyond the limits of the 200-mile economic zone into the area adjacent to it;

(b) Stocks in enclosed or semi-enclosed seas, in which as a rule there is in the central part an area adjacent to the 200-mile economic zone(s) of a coastal State or States - an "enclave" - surrounded on all sides by the 200-mile economic zone(s) of a coastal State or States, through which fish stocks migrate in transit, passing through it at various periods of their life-cycle;

(c) Stocks constituted in and inhabiting the 200-mile economic zones of two or more States which throughout their life-cycle never migrate beyond the limits of the zones;

(d) Stocks which basically are constituted in and inhabit areas of the high seas and oceans beyond the 200-mile economic zones and migrate into the 200-mile economic zone of a given State or States only at a specific period of their life-cycle;

(e) Stocks which for the duration of their entire life-cycle inhabit only areas of the high seas and oceans beyond the limits of the 200-mile economic zones.

Undoubtedly, apart from the five main types of stocks identified above there are various intermediate ones, and the interrelationships within ecosystems are extremely complex.

1.3. That notwithstanding, for purposes of a pragmatic approach to drawing up the relevant final documents and on the basis of the Conference's mandate, it is advisable to focus on consideration of the first two types of stocks. It is these stocks in relation to which the coastal State adopts and applies within its 200-mile economic zone expensive management and conservation measures which are often diminished in value as a result of the liberal regime for fishing the same stocks beyond the limits of the zones, usually in the areas adjacent to them. Fisheries practice shows that these adjacent areas are located in immediate proximity to the 200-mile economic zone and their breadth towards the ocean is about 20-70 miles.

1.4. Where measures for the management and conservation of stocks of the last two types (1.2 (d) and (e)), this issue can become the subject of consideration by future forums.

2. Correct interpretation of the rights and duties of the coastal State under article 61 of the 1982 United Nations Convention on the Law of the Sea, and in particular of the provision that "The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation."

In this connection, agreement should be reached in the recommendations on the following points:

2.1. Within the meaning of the Convention, if the issue is one of over-exploitation of a specific straddling stock, the coastal State is obliged to take the measures provided for in the Convention even if the stock is being over-exploited not within the zone, but outside the zone;

2.2. The Convention obliges the coastal State to ensure the appropriate maintenance of the living resources in the zone, but it does not provide that the measures taken by the coastal State for this purpose should be confined solely to that part of the stock which is located within the 200-mile economic zone at the time in question. The issue of the legality of the application of such measures by the coastal State to the part of the straddling stock which is located outside the zone is related to the correct interpretation of the concept of management of living marine resources.

2.3. Correct interpretation of the provisions of the 1982 United Nations Convention on the Law of the Sea concerning management of living marine resources and management of fisheries

2.3.1. Although scientific ideas regarding the management of marine biological resources had already been published in the early part of the twentieth century (F. I. Baranov, 1918), this concept was not included in the 1958 Geneva Convention on the Law of the Sea. Following the authoritative conclusions of the United Nations International Law Commission (1951-1955) and the International Technical Conference on the Conservation of the Living Resources of the Sea (1955), the concept began to be used in the treaty and legislative practice of States, and finally was reflected in the 1982 United Nations Convention on the Law of the Sea.

2.3.2. Neither in the documents of the International Law Commission nor in the 1982 United Nations Convention on the Law of the Sea is the content of the concept of "management of living marine resources" defined, although the term is used repeatedly. From the general conclusions of theoretical studies of the subject, some of them conducted in authoritative international forums, and from the Russian delegation's document (A/CONF.164/L.32), it emerges in particular that:

- Management of fish stocks means optimum action, as defined by regulations, with respect to such stocks, primarily through regulated fishing which ensures a sufficient rate of reproduction of the stock along with the maximum stable catch;

- Management is based on a combination of the best scientific evidence from biology, ecology and other natural sciences with legal regulatory mechanisms, and accordingly entails considerable financial expenditure;

- Management is effective only if it is comprehensive, i.e. if it is conducted throughout the entire habitat area of the fish stocks.

3. A distinction needs to be made between the concept of "management of stocks (reserves)" and the concept of "management of fisheries", a term which, although not used in the 1982 United Nations Convention on the Law of the Sea, is encountered extensively in practice and in the literature. There is more than one interpretation of this latter concept, but it most commonly designates a set of measures of an administrative, organizational and legal nature implemented by the flag State either with respect to the fishing vessels flying its flag or, more broadly, with respect to all juridical and physical persons represented in the fishing industry of that State.

4. On the basis of the conceptual approach outlined above, the following measures for conservation of straddling fish stocks through their improved management might be recommended.

4.1. The coastal State shall bear the responsibility for conservation of straddling fish stocks, basically those inhabiting the economic zone.

4.2. For purposes of conservation of such stocks, the measures employed by the coastal State for the management of straddling stocks shall be applied throughout the stock's habitat area.

Such management measures shall not be discriminatory in nature.

4.3. States fishing on the high seas shall be obliged, pursuant to article 116 of the 1982 United Nations Convention on the Law of the Sea, to comply with such management measures.

4.4. The above provisions shall not affect the right of such States to participate in agreeing with the coastal State upon measures for the conservation of straddling fish stocks in accordance with article 63, paragraph 2, of the 1982 United Nations Convention on the Law of the Sea.

4.5. If the coastal State refuses to agree with other States upon conservation measures, as provided for in article 63, paragraph 2, or if any State fails to comply on the high seas with non-discriminatory measures for the management of straddling stocks adopted by the coastal State, compulsory dispute settlement procedures shall apply.

4.6. Management of fisheries (exploitation) on the high seas shall be conducted by the flag State in conformity with its obligations under international law.

Flag States shall cooperate in the management of fisheries.

4.7. In implementing paragraphs 4.1-4.6 with respect to straddling fish stocks in enclosed or semi-enclosed seas, coastal States shall also take into account their rights and duties as specified in article 123 of the 1982 United Nations Convention on the Law of the Sea.